| Police Scotland logo | Freedom of Information Response Our reference: FOI 23-0424  Responded to: 10th March 2023 |
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Your recent request for information is replicated below, together with our response.

**It is now well over a year since it was announced in the press that the Wcottish Government would bring in a new digital Evidence platform (DESC) based on Axon Technology, which sits on the Microsoft Azure Public cloud.**

**I would be grateful if you would provide me with the following information relating to this project and its current status from your orgnsiations perspective as a listed participant:**

**1 - A copy of the Data Protection Impact Assessment(s) conducted on the AXON 'Evidence.com' and digital evidence management cloud services under the terms of s64 of the Data Protection Act 2018, to include any and all of the following families of Axon services in use or planned for deployment for DESC.**

I can confirm that Police Scotland hold two relevant Data Protection Impact Assessments (DPIA) in regards to your request. Please find these attached as attachment 01 for the overarch DPIA and attachment 02 for the Police Service of Scotland DPIA. Appendixes and embedded documents mentioned in the two documents have been provided as attachment 03. Duplicate attachments/embedded documents have only been provided once.

I must advise that it has been necessary to withhold some of the information requested, therefore, in terms of Section 16 of the Freedom of Information (Scotland) Act 2002, I am refusing to provide you with the information sought.

Section 16 requires Police Scotland when refusing to provide such information because it is exempt, to provide you with a notice which:

* states that it holds the information,
* states that it is claiming an exemption,
* specifies the exemption in question and
* states, if that would not be otherwise apparent, why the exemption applies.

I can confirm that Police Scotland holds the information you have requested and the exemption that I consider to be applicable is set out at:

* Section 30(c) - Prejudice to the Effective Conduct of Public Affairs
* Section 35(1)(a)&(b) – Law Enforcement
* Section 38(1)(b) – Personal Information

## Section 30 (c) - Prejudice to the Effective Conduct of Public Affairs.

Where necessary some names / telephone numbers and email addresses have been redacted. To release these details publicly through FOI legislation could negatively impact on the operational effectiveness of various departments and external partner agencies. While it is acknowledged that the disclosure of this information would support transparency and better inform the public as to how the Service conducts its business, there are already established routes for the public to make contact with the police and the disclosure of these additional details would not support the effective conduct of public affairs. As a result, section 30(c) of the Freedom of Information (Scotland) Act 2002 is engaged.

## Section 35(1)(a)&(b) – Law Enforcement

Technical information in relation to the type and level of encryption used and the DESC supporting infrastructure network design have been redacted. Information is exempt information if its disclosure under this Act, would or would be likely to prejudice substantially the prevention or detection of crime. It is not exceptional for individuals to enquire as to specific details information technology in use in Police Scotland. Nonetheless, there is concern that the release of such data could provide attack opportunities.

The requested information could be used by a hostile party to plan and execute an attack on the DESC system. Such attacks could take the form of data theft, denial of service or other deliberate disruptions. This could not help but have the effect of reducing the ability of the police to undertake relevant activities. By extension this would also effect any partner agencies using the system.

This is a non-absolute exemption and requires the application of the public interest test.

## Public Interest Test

The public interest factors favouring disclosure of the information surround the Service’s accountability for public funds in terms of the cost to the public purse.

Those favouring retention of the information surround the adverse effect on the efficiency of the Service and the other partner agencies involved. Disclosure would provide those intent on disrupting police activities with enough information to plan and execute a targeted attack. Where systems are compromised, there is also the potential for sensitive information such as personal data, security information and other data to be made public, therefore, in this instance the factors favouring retention of the data outweigh those of disclosure.

## Section 38(1)(b) – Personal Information

Any information that could lead to the identification of individuals has been redacted unless it is deemed within the public interest to disclose them. This is in accordance with Section 38(1)(b) of the Freedom of Information (Scotland) Act 2002 – Personal Information.

This mainly relates to the name and email addresses of persons who are outside Police Scotland and any staff member within Police Scotland of a more junior role. Those of a more senior level have been included as it is deemed within the public interest to do so.

As such, the processing would be unfair and unlawful in respect of the individuals concerned and would therefore be in breach of the first principle of the Data Protection Act 2018.

**2 - A copy of the specific terms of service applied within the contract between Axon and the Authority relating to Data Protection Act Part 3; or confirmation that their standard Terms of Service have been applied without modification.**

The contract requested is between Axon and the Scottish Government rather than with Police Scotland. As such, in terms of Section 17 of the Freedom of Information (Scotland) Act 2002, this represents a notice that the information requested is not held by Police Scotland. You may wish to contact the Scottish Government in this regard and I have included a link to their FOI request page below:

[Request information - gov.scot (www.gov.scot)](https://www.gov.scot/about/contact-information/how-to-request-information/)

**3 - Details of any sub-processor engaged by Axon as part of their DESC service delivery and the countries in which data shall or may be processed.**

I can confirm that this information has already been provided within attachment 03 within one of the appendixes, pages 11 and 12 refer.

**If element 4a below is not in place please apply element 4b - one of them should be applicable, but both cannot be:**

**4a - Copies of any specific diligence material, contractual terms or other undertakings from Axon and their sub-processors that they will not transfer any personal data processed for a Law Enforcement purpose by the Authority outside of the UK without the Authorities prior written and specific approval in each instance, as required under S59(7) go the Act;**

**OR -**

**4b - Copies of the guidance issued by the Authority to any officers and staff relating to the steps and procedures required by the Authority (under DPA 2018 s.77) before the upload of personal data processed for a Law Enforcement purpose to any Axon cloud services where an undertaking not to transfer the data outside of UK has not been given in contract.**

Police Scotland have answered question 4a.

Please find the relevant document between Police Scotland and Axon attached as attachment 04. Some email addresses have been redacted under Section 30(c) - Prejudice to the Effective Conduct of Public Affairs and some names under Section 38(1) – Personal Information. I would direct you to my answer to question 1 for the rationale behind this.

**5 - Copies of the communications between the authority and the ICO, and/or other professional or advisors, which informed the creation of the DPIA and/or supported decisions around the procurement or use of the Axon evidence.com related products for the processing of personal data for a Law Enforcement purpose by the Authority.**

I can confirm that Police Scotland hold email correspondence with the Information Commissioners Office as well as legal advice.

In regards to the correspondence with the Information Commissioners Office, please find this attached as attachment 05. Some email addresses have been redacted under Section 30(c) - Prejudice to the Effective Conduct of Public Affairs and some names under Section 38(1) – Personal Information. I would direct you to my answer to question 1 for the rationale behind this.

In regards to the legal advice, your request for information has now been considered and a decision was made not to grant your request. The information requested by you is considered to be exempt in terms of the Freedom of Information (Scotland) Act 2002 (the Act).

Section 16 requires Police Scotland when refusing to provide such information because it is exempt, to provide you with a notice which:

* states that it holds the information,
* states that it is claiming an exemption,
* specifies the exemption in question and
* states, if that would not be otherwise apparent, why the exemption applies.

Where information is considered to be exempt, this letter serves as a Refusal Notice that information is held and an explanation of the appropriate exemption is provided.

In relation to the legal advice that Police Scotland hold the following exemption is applicable:

## Section 36(1) – Confidentiality

Section 36(1) of FOISA provides that information in respect of which a claim to confidentiality of communications could be maintained in legal proceedings is exempt information. One type of communication covered by this exemption is that to which legal advice privilege, a form of legal professional privilege, applies. Legal advice privilege covers communications between lawyers and their clients in the course of which legal advice is sought or given.

As you may be aware, for the exemption to apply to this particular type of communication, certain conditions must be fulfilled; namely,

(i) The information must relate to communications with a professional legal adviser, such as a solicitor or an advocate;

(ii) The legal adviser must be acting in their professional capacity; and

(iii) The communications must occur in the context of the legal adviser's professional relationship with their client.

I would advise that all of the withheld information comprised communications between legal advisers within Legal Services Department (Police Scotland) and Police Scotland staff members, as their client, in which legal advice was sought and provided. Consequently, I considered the withheld information was subject to legal advice privilege.

The exemption in section 36(1) is a qualified exemption, which means that its application is subject to the public interest test set out in section 2(1)(b) of FOISA.

## Public Interest Test

As the Commissioner has noted in a number of previous decisions, the courts have long recognised the strong public interest in maintaining the right to confidentiality of communications between legal adviser and client on administration of justice grounds. In a freedom of information context, the strong inherent public interest in maintaining legal professional privilege was emphasised by the High Court (of England and Wales) in the case of Department for Business, Enterprise and Regulatory Reform v Information Commissioner and O'Brien [2009] EWHC 164 (QB). Generally, the High Court's reasoning will be relevant to the application of section 36(1) of FOISA in this instance.

There is a strong public interest in maintaining legal professional privilege and ensuring the confidentiality of communications between legal advisers and their clients. In my deliberations I would argue that it is important that lawyers can provide free and frank legal advice which considers and discusses all issues and options without fear that such advice might be disclosed and, as a result, potentially taken out of context.

Further, if there was an expectation that such legal advice would be disclosed in the future, this would inevitably lead to similar advice being much more circumspect and therefore less effective.

Nonetheless, in this instance, I accept that there is a general public interest in disclosure of the information under consideration, to allow scrutiny of the actions of the Service and contribute to transparency and public accountability.

However, the strong public interest in ensuring that public authorities, including Police Scotland, are able to obtain and consider legal advice on a confidential basis. As noted above, the Commissioner acknowledges that the courts have long recognised the strong public interest in maintaining the right to confidentiality of communications between legal adviser and client, on administration of justice grounds.

As such, considering all competing arguments, withholding the information is the preferred stance.

If you require any further assistance please contact us quoting the reference above.

You can request a review of this response within the next 40 working days by [email](mailto:foi@scotland.police.uk) or by letter (Information Management - FOI, Police Scotland, Clyde Gateway, 2 French Street, Dalmarnock, G40 4EH). Requests must include the reason for your dissatisfaction.

If you remain dissatisfied following our review response, you can appeal to the Office of the Scottish Information Commissioner (OSIC) within 6 months - [online](http://www.itspublicknowledge.info/Appeal), by [email](mailto:enquiries@itspublicknowledge.info) or by letter (OSIC, Kinburn Castle, Doubledykes Road, St Andrews, KY16 9DS).

Following an OSIC appeal, you can appeal to the Court of Session on a point of law only.

This response will be added to our [Disclosure Log](http://www.scotland.police.uk/access-to-information/freedom-of-information/disclosure-log) in seven days' time.

Every effort has been taken to ensure our response is as accessible as possible. If you require this response to be provided in an alternative format, please let us know.